

## **EXHIBIT 16**



FACT SHEET: DECEMBER 2016

## The Flawed Guantanamo Assessment Files

In 2011, Wikileaks released more than 750 assessments of detainees at the Guantanamo Bay detention facility done by Joint Task Force Guantanamo (JTF-GTMO), the military task force responsible for operating the remote prison. These assessments are now being cited by lawmakers, the media, and commentators as fact, and used to criticize the release of any detainee cleared for transfer. But the documents and the conclusions about the detainees that the assessments contain have repeatedly been found—by national security and intelligence agencies and in federal court—to be outdated, incorrect, and unreliable.

### ✓ What's in the JTF-GTMO assessments?

The assessments include JTF-GTMO's conclusions on the detainee's level of involvement with al Qaeda, the Taliban, other militant groups, and whether or not he engaged in combat with U.S. or coalition forces. They also include the detainee's account of events, and a timeline of his capture, as well as an assessment of the level of threat the detainee poses to the United States, the level of threat from a detention perspective, and the detainee's estimated level of intelligence value. These assessments are ranked "High," "Medium," or "Low."<sup>1</sup>

### ✓ Federal courts have rejected the assessments.

Federal courts reviewing the cases of detainees challenging their imprisonment have found that the information in many of the JTF-GTMO assessments were so unreliable that they couldn't be used to justify continued detention. In these *habeas corpus* hearings, the government's intelligence reports are presumed to be true, unless the detainee can present "clear evidence to the contrary."<sup>2</sup> Even so, district court judges have found that JTF-GTMO assessments were wrong in over half the cases (31 of 60). What's more, in 94 percent of cases where the courts granted petitions for detainees that JTF-GTMO assessed as "medium" or "high" risk (31 out of 33), federal courts found that the information JTF-GTMO used to make these determinations was insufficient, incorrect, or too unreliable to allow the government to continue to lawfully detain them.<sup>3</sup>

### ✓ The assessments contain unreliable information from tortured detainees.

Numerous JTF-GTMO assessments include information from detainees who were tortured, such as Abu Zubaydah,<sup>4</sup> Ibn Sheikh Al Libi,<sup>5</sup> and Mohammed al Qahtani.<sup>6</sup> The result is that much of the information is not trustworthy, as torture or cruel, inhuman, and degrading treatment produces unreliable information.<sup>7</sup> Detainees may provide inaccurate information or confess to untrue allegations to stop abuse. Detainees also have a strong motivation to implicate other prisoners in hopes of better treatment – some who provided information received "comfort items" and preferential treatment.<sup>8</sup> Navy Rear Admiral Dave Thomas, the JTF-GTMO commander in 2008, even included a warning in some of the files that read: "Any information provided should be adequately verified through other sources before being utilized."<sup>9</sup>

<sup>1</sup> <http://projects.nytimes.com/guantanamo/detainees>

<sup>2</sup> <https://www.lawfareblog.com/daphne-eviatar-latif-and-ndaa>

<sup>3</sup> Data provided by Brian E. Foster, Covington & Burling LLP. See also *Gharani v. Bush* (2009) 593 F. Supp. 2d 144; Del Quentin Wilber, *Detainee-Informer Presents Quandary for Government*, February 3, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/02/AR2009020203337.html>; *Ahmed v. Obama* 613 F. Supp. 2d 51 (D.D.C. 2009).

<sup>4</sup> <http://www.humanrightsfirst.org/senate-report-cia-torture-abu-zubaydah>

<sup>5</sup> <http://www.nationaljournal.com/s/34470/torture-report-suggests-interrogation-supplied-false-intelligence-used-justify-2003-invasion-iraq>

<sup>6</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/13/AR2009011303372.html>

<sup>7</sup> <http://justsecurity.org/18207/torture-unreliable-ineestimably-costly/>

<sup>8</sup> <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/02/AR2009020203337.html>

<sup>9</sup> <http://www.mcclatchydc.com/news/special-reports/article24625636.html>

**☑ The assessments include information from other unreliable sources.**

The sources that provided the information in the JTF-GTMO detainee assessments were notoriously unreliable. They include current and former detainees, foreign militaries, intelligence services, and militias – sometimes the same ones who handed the detainees over to U.S. troops in return for rewards between \$3,000 and \$25,000<sup>10</sup> – and foreign interrogators (including Chinese and Russian interrogators).<sup>11</sup> The source of the information is often not identified, and some information comes from interrogations that took place before the detainee was in U.S. custody.<sup>12</sup>

**☑ The assessments also include mistaken identities of detainees.**

Because of the extreme level of secrecy surrounding all information about Guantanamo detainees, it is impossible to know how many were and continue to be held because of inaccurate information. However, there is sufficient evidence to cast doubt on the accuracy of the conclusions made in the JTF-GTMO detainee assessments.

- In December 2015, the U.S. government admitted that Guantanamo detainee **Mustafa al-Aziz al-Shamiri** was a low-level fighter, not the al Qaeda courier and trainer the government previously claimed he was.<sup>13</sup> Al-Shamiri's 2008 JTF-GTMO assessment claims he was affiliated with the Yemeni al Qaeda cell responsible for the USS *Cole* bombing, a senior trainer at an al Qaeda training camp, and an al Qaeda "guesthouse logistician."<sup>14</sup> When the Obama Administration reviewed his case, it found that "these activities were carried out by other known extremists with names or aliases similar [to al-Shamiri's]."<sup>15</sup>

**☑ The Obama Administration has instituted more thorough processes.**

- **Guantanamo Review Task Force.** Since 2009, the Obama Administration has instituted more rigorous assessment processes for Guantanamo detainees. It created the Guantanamo Review Task Force, dropping the JTF-GTMO assessments classifying each detainee into categories of "High," "Medium," and "Low" risk. The Task Force used a more thorough analysis and rigorous metric to evaluate detainees,<sup>16</sup> involving the Department of Defense, Department of Justice, Department of State, Department of Homeland Security, Office of the Director of National Intelligence, and Joint Chiefs of Staff in formulating detainee assessments.<sup>17</sup>
- **Periodic Review Board.** In 2013, the administration began the Periodic Review Board (PRB) process, to further evaluate the Guantanamo detainees who had been slated for indefinite detention. The PRB, comprised of members of the same agencies that composed the 2009 Task Force, "review[s] whether continued detention of particular individuals at Guantanamo remains necessary to protect against a continuing significant threat to the security of the United States."<sup>18</sup> Of the 64 detainees who have received PRB decisions, 38 of them have been cleared for transfer out of Guantanamo, including Mustafa al-Aziz al-Shamiri, a case of mistaken identity.<sup>19</sup>

<sup>10</sup> [http://www.nbcnews.com/id/8049868/ns/world\\_news/#.VrEf7fkrKCg](http://www.nbcnews.com/id/8049868/ns/world_news/#.VrEf7fkrKCg)

<sup>11</sup> <http://www.nytimes.com/2011/04/25/world/guantanamo-files-lives-in-an-american-limbo.html>

<sup>12</sup> <http://www.mcclatchydc.com/news/special-reports/article24625636.html>

<sup>13</sup> [http://www.prs.mil/Portals/60/Documents/ISN434/151201\\_U\\_ISN434\\_HEARING\\_TRANSCRIPT\\_PUBLIC\\_SESSION\\_PUBREL.pdf](http://www.prs.mil/Portals/60/Documents/ISN434/151201_U_ISN434_HEARING_TRANSCRIPT_PUBLIC_SESSION_PUBREL.pdf)

<sup>14</sup> <http://projects.nytimes.com/guantanamo/detainees/434-mustafa-abdul-qawi-abdul-aziz-al-shamiri>

<sup>15</sup> [http://www.prs.mil/Portals/60/Documents/ISN434/20150925\\_U\\_ISN434\\_GOVERNMENTS\\_UNCLASSIFIED\\_SUMMARY\\_PUBLIC.pdf](http://www.prs.mil/Portals/60/Documents/ISN434/20150925_U_ISN434_GOVERNMENTS_UNCLASSIFIED_SUMMARY_PUBLIC.pdf)

<sup>16</sup> <http://www.nytimes.com/2011/04/25/world/guantanamo-files-lives-in-an-american-limbo.html>

<sup>17</sup> <http://www.justice.gov/sites/default/files/ag/legacy/2010/06/02/guantanamo-review-final-report.pdf>

<sup>18</sup> <http://www.prs.mil/AboutthePRB.aspx>

<sup>19</sup> <http://www.prs.mil/ReviewInformation/InitialReview.aspx>